IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 12/03/2004

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THE HON'BLE MR. B. SUBHASHAN REDDY, Chief Justice
AND
THE HON'BLE MR. JUSTICE M. THANIKACHALAM

W.P.M.P. Nos.6375 of 2004
and W.P.M.P NO.6376 of 2004 in
W.P.Nos.5491 of 2004 and WP No.5492 of 2004

Citizen, Consumer & Civic Action Group Rep. by its Trustee N.L. Rajah,
No.8, 4th Street, Venkateswara Nagar, ...
Petitioner in WPMP Adyar, Chennai - 600 020.
No.6375/2004

Krishnaswamy Associates (P) Ltd.
Rep. by its Director,
Dr. S. Krishnaswamy ... Petitioner in WPMP
Chennai - 600 041. No.6376/2004

Vs.

1. Prasar Bharathi
(Broadcasting Corporation of India)
rep. by its Chief Executive,
2nd Floor, PTI Building,
Sansad Marg, New Delhi - 110 001.

2. Telecom Regulatory Authority of India
rep. by its Chairman,
A-2/14, Safdarjung Enclave
New Delhi - 110 029.

3. Ten Sports
(A Division of Taj Television India Pvt. Ltd)
403, Manish Commercial Centre
Dr. A.B. Road, Worli, Respondents in
Mumbai - 400 025. both petitions

Petitions to pass orders directing the second respondent to forthwith pass appropriate orders in the application filed by the first respondent with the second respondent for making available the terrestrial television broadcasting rights for the India Pakistan Cricket Test Series to be held in March April 2004 pending disposal of the writ petitions.

!For Petitioners : Mr. Sriram Panchu, S.C. for
M/s.T. Mohan & S. Devika

^For Respondents 1 and 2 : Mr. V.T. Gopalan, Addl. S.G.
assisted by
Mr. Jagadeesan, S.C.G.S.C.

For 3rd Respondent : Mr. K. Parasaran, S.C.
assisted by
Mr. P.S. Raman
and
Mr. Anish Dayal for
Mr. A.R. Karunakaran

:O R D E R

THE HON'BLE THE CHIEF JUSTICE

Even before the batting has started in the much awaited IndiaPakistan cricket series, scheduled from 13th of this month, which is a good augury for the relations with our immediate neighbour, which had been under strain since a long, the battle has started on our home ground regarding the terrestrial rights to telecast live the said matches. 'Ten Sports', a business concern, has acquired the global radio and television rights of the series from Pakistan Cricket Board, where the matches are to be played. In lieu of the grant of the said rights to telecast through satellites, Ten Sports has already parted with its rights to Pakistan to telecast the matches by Pakistan Television (PTV) for an agreed price. Now, the public in Pakistan can view the matches through public service provider. But, in our country, it is a different scene. As already stated above, t he global rights, including India, have been acquired by Ten Sports, of course for a whopping cost of around $ 10 million paid to Pakistan. But even though the telecasting rights to Pakistan Television has been given by Ten Sports for an agreed price, the Union Government and its agent Prasar Bharati are struggling hard to get those terrestrial rights to telecast through Doordarshan and in fact are pleading helplessness to intervene in the matter. Hence, these two probono publico writ petitions.

2. Airwaves is a public property and the transmission is regulated by the Government and now it is entrusted with an Authority. Primarily rights vest in the Indian public over the Indian territory and they are regulated under the relevant Acts, be it Indian Telegraph Act, 1 885, Prasar Bharati Act, 1990 or the Telecom Regulatory Authority of India Act, 1997. Any rights given to an intermediary to transmit or re-transmit are secondary rights. No doubt, Ten Sports have bid about three years back when Indian Government was hesitating to bid.

The third respondent has also contracted with Advertising Agencies and presumably lot of money has been exchanged in the process. There are laches in approaching this Court at the last moment. But prima facie, we see a larger public interest in espousing the cause of the people in India to watch the live telecast of the Indo-Pak series matches, which were not played between the two countries (exclusively as before) for the past 15 years. We are of the considered view that laches can be condoned for the reason that there had been apprehensions in the minds of the people as to whether the matches will go on as scheduled.

3. Law on this aspect is not so clear as it is so evident from the plea of the respondents 1 and 2 in requesting the third respondent to part with its rights so far as Indian sub-continent is concerned, offering some price, which, it seems, is not acceptable to the third respondent for obvious commercial reasons. There is only one leading judgment on the point as on date i.e. SECRETARY, MINISTRY OF I & B v. CRICKET ASSOCIATION, BENGAL (AIR 1995 S.C. 1236), which held in no uncertain terms that right to have access to the electronic media is a fundamental right to speech and expression coming within the ambit of Article 19 (1) (a) of the Constitution and which can be restricted reasonably only for the reasons enumerated in sub-Article (2) of Article 19 of the Constitution. No grounds are made out to attract Article 19 (2) of the Constitution. On the other hand, the respondents 1 and 2 support the cause espoused by the petitioners in these two writ petitions. But the third respondent is a loner in the fight. However, his roots are strong in contractual field, which cannot completely be uprooted by this public law remedy forum. It is a rare piquant situation where citizens of India as a whole as also the Government which rules them are looking at the intervention of the Court for invoking its extraordinary jurisdiction under Article 226 of the Constitution of India. It is undeniable that there is a great deal of responsibility on the constitutional courts in India to enforce the fundamental rights of the citizens in case they are not provided by the State.

4. The circumstances are such that the respondents 1 and 2 also cannot be blamed as being guilty of in-action. Equally, there is no guilt on the part of the third respondent in participating in the bid and acquiring the rights. But the airwave being a public property of 103 crores of Indians, can those primary rights be curtailed by allowing the third respondent to claim exclusivity even though it holds only secondary rights to cater to the needs of only a specialized class of viewers through satellites and by pay channels? If the matches are not played, there cannot be any fundamental

right directing the playing of matches. Also, if the Pakistan forbade the telecast of the match, the question of fundamental right does not arise at all. But when the matches are played and they are telecast live and further when those rights have been sold for transmission or re-transmission as the case may be, even though the third respondent has acquired global rights including India, both for radio and television, and rights to transmit through radio having been given to All India Radio (AIR), prima facie, we are of the view that respondents 1 and 2 cannot be allowed to be silent spectators in so far as the terrestrial rights of live telecast of Indo-Pak cricket series, is concerned. Some solution has to be found pending final adjudication of several important aspects and time is running out and it is now time for our reaction as we were told by Mr. K. Parasaran, learned senior counsel appearing for the third respondent, yesterday that some thing might come out in the negotiations but later in the day, the learned senior counsel has made it clear to the Court to proceed to consider the interlocutory applications and dispose of the same.

5. Mr. Sriram Panchu, learned senior counsel appearing for the petitioners, Mr. V.T. Gopalan, learned Additional Solicitor General appearing for the respondents 1 and 2 and Mr. K. Parasaran, learned senior counsel, assisted by Mr. P.S.Raman, learned counsel, appearing for the third respondent, have made their submissions and we appreciate the cerebral assistance rendered by these learned counsel on these mind boggling issues. As already mentioned supra, there is a prima facie case of fundamental rights of freedom and speech made out by the petitioners but that alone is not sufficient to grant the relief. But there is no purpose served in these interlocutory applications as even though we may finally adjudicate over the terrestrial rights in the writ petitions, if the interim orders are not passed relating to this Indo-Pak cricket series, whose duration lasts just a month. Then we have to see the balance of convenience aspect so as to keep the scales of justice even, even at this interlocutory stage. For that we have to see the interest of the third respondent who is not at all at fault and who has sunk millions of dollars in bagging the global contract. The third respondent is a commercial venture but indisputably its right is subservient to the larger interest of the largest democracy in the world. A balance has to be struck between the larger public interest by not harming the private and commercial interest of the third respondent even keeping in view other contractual parties of the third respondent who are behind the scene and who are in no way to blame and whose stakes are high. Neither can we deny the fundamental right to the television viewers in India nor can we forget the commercial rights of the third respondent and his assignees.

6. Viewing so, we are of the considered opinion that the balance of convenience lies in directing the third respondent to transmit the Indo-Pak cricket series, scheduled from 13.3.2004, through Indian Doordarshan by retaining 'Ten Sports' logo and also availing all other modes of transmission through satellites and honouring the advertisement contracts in all modes of transmission, whether terrestrial or satellite. The liability to pay the amounts in between the respondents 1 and 2 on the one side and the third respondent on the other, and quantum thereof shall be worked out during the final hearing of the writ petitions. The writ miscellaneous petitions are disposed of accordingly.

(B.S.R., CJ) (M.T., J)
12.03.2004
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Index: Yes
Internet: Yes